

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

FIELDWOOD ENERGY LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-33948 (MI)

(Jointly Administered)

**ECOPETROL AMERICA LLC’S STATEMENT OF POSITION AND RESERVATION
OF RIGHTS IN REGARDS TO EMERGENCY MOTION OF
DEBTORS FOR ORDER (I) APPROVING ENTRY INTO FIRST LIEN
EXIT FACILITY COMMITMENT LETTER AND RELATED FEE LETTER,
(II) AUTHORIZING INCURRENCE AND PAYMENT OF CERTAIN FEES AND
COSTS IN CONNECTION THEREWITH, AND (III) GRANTING RELATED RELIEF**

Ecopetrol America LLC (“Ecopetrol”) by and through its undersigned counsel, hereby files this statement of position in regards to the above-captioned debtors’ (the “Debtors”) *Emergency Motion of Debtors for Order (I) Approving Entry Into First Lien Exit Facility Commitment Letter and Related Fee Letter, (II) Authorizing Incurrence and Payment of Certain Fees and Costs in Connection Therewith, and (III) Granting Related Relief* [Docket No. 1165] (the “Exit Facility Motion”), and respectfully states the following:

A. Unit Operating Agreement

1. Ecopetrol holds working interests in certain oil and gas leases covering submerged lands on the Outer Continental Shelf situated in the Mississippi Canyon protraction area (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Dynamic Offshore Resources NS, LLC (0158); Fieldwood Energy LLC (6778); Fieldwood Energy Inc. (4991); Fieldwood Energy Offshore LLC (4494); Fieldwood Onshore LLC (3489); Fieldwood SD Offshore LLC (8786); Fieldwood Offshore LLC (2930); FW GOM Pipeline, Inc. (8440); GOM Shelf LLC (8107); Bandon Oil and Gas GP, LLC (9172); Bandon Oil and Gas, LP (9266); Fieldwood Energy SP LLC (1971); Galveston Bay Pipeline LLC (5703); and Galveston Bay Processing LLC (0422). The Debtors’ primary mailing address is 2000 W. Sam Houston Parkway S., Suite 1200, Houston, TX 77042.

“Leases”), for which Fieldwood Energy, LLC, one of the Debtors (“Fieldwood”), serves as the operator under that certain Unit Operating Agreement, dated effective January 1, 2013 (inclusive of attachments, memoranda, and related agreements, and as has been amended or restated from time to time, collectively, the “UOA”).²

2. Pursuant to Section 6.1 of the UOA, Fieldwood is, among other things, required to maintain a joint account (the “Joint Account”), which contains funds (the “Ecopetrol Funds”) that Ecopetrol has contributed pursuant to certain joint interest billings Ecopetrol received from Fieldwood under the UOA (the “Joint Interest Billings”). The purpose of the Joint Account is for Fieldwood to use the funds therein to pay third-parties to maintain, operate, and service the projects being undertaken pursuant to the UOA.

3. Based on discussions with Fieldwood’s counsel, Ecopetrol understands that Fieldwood intends to assume and assign the UOA as part of the “Deepwater” asset sale contemplated in connection with the *Third Amended Joint Chapter 11 Plan of Fieldwood Energy LLC and Its Affiliated Debtors* [Docket No. 1115] (the “Plan”).

B. Lien Claim Indemnification Rights Granted by the UOA

4. Pursuant to the UOA, Fieldwood is, among other things, required to use “reasonable efforts to keep the [Leases] free from all liens and encumbrances.” See UOA, Section 5.4. In addition, among other provisions benefiting Ecopetrol, the UOA provides a “hold harmless” clause:

The obligations, duties and liabilities of the Parties shall be several and not joint or collective; and, nothing contained herein shall ever be construed as creating a partnership, joint venture, association or other character of business entity recognizable in law for any purpose. Each Party shall hold all the other Parties

² The Debtors have attached excerpts of the UOA to its *Emergency Motion of the Debtors for Entry of an Order Extending the Automatic Stay to Certain of Debtors’ Co-Working Interest Owners* [Docket No. 563] (the “Emergency Motion”).

harmless from liens and encumbrances on the Leases or in the Contract Area arising as a result of its acts or omissions.

See UOA, Section 22.1.

5. Thus, Fieldwood is required to indemnify Ecopetrol for any lien claim amounts regarding the Leases and/or the Contract Area (as defined in the UOA), including its attorneys' fees, costs, and any other damages Ecopetrol suffers as a result of Fieldwood's acts or omissions.

C. Ecopetrol's Security Interests

6. Fieldwood has granted Ecopetrol a security interest in, among other things, Fieldwood's working interest in the applicable Leases within the Contract Area to secure Fieldwood's obligations under the UOA pursuant to a certain recorded Memorandums of Operating Agreement, Act of Mortgage, Security Agreement, and Financial Statement, as supplemented, regarding the UOA, and in accordance with Sections 6.3.2 and 6.3.3 of the UOA.³

7. Ecopetrol's security interests in Fieldwood's working interest in the applicable Leases within the Contract Area secures (a) Ecopetrol's indemnity rights under the UOA for any lien claim amounts regarding the Leases and/or the Contract Area, including its attorneys' fees, costs, and any other damages Ecopetrol suffers as a result of Fieldwood's acts or omissions, (b) Fieldwood's proportionate share of expenses owed to the Joint Account (if ever unpaid), and, (c) if applicable, amounts due to Ecopetrol on account of Fieldwood's improper use of the Ecopetrol Funds in the Joint Account.

D. Secured Claims Against Fieldwood

8. Fieldwood has breached the UOA giving rise to, among other remedies, Ecopetrol's

³ *See* recorded Memorandums of Operating Agreement, Act of Mortgage, Security Agreement, and Financial Statement, as supplemented, regarding the UOA [Plaquemines Parish Recording Page, file number 2011-00004814, book 1258, page 599; and file number 2020-00001797, book 1424, page 734], and Sections 6.3.2 and 6.3.3 of the UOA.

secured indemnification rights. The currently known lien claim amounts regarding the Leases and/or Contract Area are at least \$7,075,684.85 (not including interest or Ecopetrol's fees and costs),⁴ as further detailed in Ecopetrol's proofs of claim filed in these chapter 11 cases. *See, e.g.*, Proof of Claim No. 455. On information and belief, there may be additional lien claims or other claims that may give rise to a lien or other interest in the Leases and/or Contract Area, for which Fieldwood may be required to indemnify and/or hold harmless Ecopetrol. If necessary, Ecopetrol will amend its proofs of claim to increase the claim amount to reflect Fieldwood's actions with respect to the Joint Account and/or Ecopetrol Funds.

E. Exit Facility Motion Ambiguity

9. The Exit Facility Motion and its related exhibits do not explain how the relief requested therein will ultimately impact Ecopetrol's security interests in Fieldwood's working interest under the Leases within the Contract Area (as provided under the UOA) to secure the past breach described above.⁵ Furthermore, to the extent Fieldwood desires to assume and assign the UOA (which Ecopetrol understands is the case), it is unclear how the relief requested in the Exit Facility Motion and its related exhibits will impact Ecopetrol's future secured claims granted under the UOA. Will the exit financing facilities prime Ecopetrol notwithstanding the prospective assumption and assignment of the UOA and related agreements?

10. The Commitment Letter's terms provide that the Debtors' newly-formed borrowing entities and related subsidiaries and parent entities (the "Loan Parties") will grant the lenders to the senior secured first lien term loan facility (the "First Lien Exit Facility") a "perfected first-

⁴ These lien claim amounts arise from at least the following eight claimants: Atlantic Maritime Services, LLC; National Oilwell Varco, L.P.; Newpark Drilling Fluids LLC; PRT Offshore; Tetra Technologies, Inc.; Wild Well Control, Inc.; Wood Group PSN, Inc.; and Workstrings International, L.L.C.

⁵ The Exit Facility Motion contains one exhibit, which is the Commitment Letter associated with the exit facilities, and three annexes attached to the Commitment Letter – two terms and conditions sections and a copy of the Plan.

priority security interest in” all of the Loan Parties’ assets, “excluding certain ‘excluded assets’ to be agreed.” *See* Commitment Letter, Annex B, § Security. The Term Sheet does not define “excluded assets” to include Fieldwood’s working interests in the applicable Leases within the Contract Area under the UOA.

11. It does not appear that the Exit Facility Motion at this time seeks approval of the exit financing facilities discussed therein. Ecopetrol nevertheless asserts that any ultimate order that may approve the exit financing facilities should provide that Ecopetrol’s security interest in Fieldwood’s working interest in the applicable Leases within the Contract Area under the UOA are senior to the (a) First Lien Exit Facility, and (b) Second Lien Exit Facility (as defined in the Exit Facility Motion).

RESERVATION OF RIGHTS

12. Ecopetrol hereby reserves the right to amend, modify, or supplement this statement and object (if necessary) to approval of the exit financing facilities and/or submit other briefing the Court may request in regards to the subject matter of the Exit Facility Motion.

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Dated: April 9, 2021

SQUIRE PATTON BOGGS (US) LLP

/s/ Travis A. McRoberts

Travis A. McRoberts
2000 McKinney Avenue, Suite 1700
Dallas, Texas 75201
Telephone: (214)758-1500
Facsimile: (214)758-1500
Email: travis.mcroberts@squirepb.com

-and-

Kelly Singer (admitted *pro hac vice*)
SQUIRE PATTON BOGGS (US) LLP
1 E. Washington St., Suite 2700
Phoenix, Arizona 85004
Telephone: (602) 528-4000
Facsimile: (602) 253-8129
Email: kelly.singer@squirepb.com

Counsel for Ecopetrol America LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will serve notice on all parties registered to receive notice in these cases.

/s/ Travis A. McRoberts
Travis A. McRoberts